

3. Plaintiff Norman F. Hicks, Jr. is an individual that is a citizen of the State of Texas.

4. Plaintiff Jason Hicks is an individual that is a citizen of the State of Texas.

5. Defendant, Harris County, is a governmental organization of the State of Texas, and has been served and previously filed an Answer in this lawsuit.

6. Defendant, Christopher Pool, was, at all times material to this suit, an officer employed by the Harris County Sheriff's Department. Each of the acts complained of herein arises from the conduct of Defendant while acting under color of state law, and was committed within the scope of his employment and authority with the Harris County Sheriff's Department, and has been served and previously filed an Answer in this lawsuit.

B. JURISDICTION

7. The Court has jurisdiction over the lawsuit because the suit arises under 28 U.S.C. 1331 and 28 U.S.C. 1343(3).

C. VENUE

8. Venue is proper in this district under 28 U.S.C. 1391(b) because a substantial part of the events or omissions giving rise to this claim occurred in this district.

D. FACTS

9. On or about January 7, 2011, Norman F. Hicks, Sr. was returned to the Harris County Jail after being arrested in Oklahoma City, Oklahoma on a probation violation stemming from a conviction in Harris County, Texas.

10. At the time Hicks was placed in the Harris County Jail, he was in good physical health.

11. On or about January 16, 2011, Hicks was violently and brutally assaulted by Harris County Detention Officer Christopher Pool. Hicks was handcuffed and beaten by his assailant. Hicks died on January 22, 2011 in a Houston hospital as a result of the injuries he sustained.

12. The brutal assault on Hicks, according to the Harris County Medical Examiner's Office, resulted in severe brain trauma, broken bones in his face, including bones in his nose and around his eyes. In addition, Hicks sustained fractures to his ribs in the violent altercation while in the Harris County Jail.

13. Though Pool's assault was premeditated, no one intervened and even after the assault, no one sought immediate medical treatment for Hicks.

14. At all pertinent times, Defendant Harris County authorized and/or ratified the wrongful and tortious acts and/or omissions described herein.

E. FIRST CLAIM FOR RELIEF – 42 U.S.C. § 1983

15. The allegations contained in Paragraphs 9 through 14 are herein incorporated by reference, the same as if fully set forth verbatim for any and all purposes of this pleading.

16. 42 U.S.C. § 1983 requires that the conduct complained of must have deprived the person of some privilege or immunity secured by the Constitution or laws of the United States. As such, Plaintiffs allege that Defendants, jointly and/or severally deprived Hicks of his Fourth Amendment rights and those rights, privileges, and immunities secured by the Fifth and Eighth Amendments to the Constitution incorporated and applied to the states through the Fourteenth Amendment. Defendants violated this provision by the following actions and/or omissions, *inter alia*:

a) by using excessive force and/or deadly force in the course of Defendants' custody of Mr. Hicks, in violation of the Fourth Amendment and its "objective reasonableness" standard. Plaintiffs therefore plead that Mr. Hicks was unlawfully beaten. Said actions resulted directly and only from the use of force that was clearly excessive to the need, and the excessiveness of which was objectively unreasonable;

b) by failing to intervene, where such intervention would have prevented the violations and/or injuries and/or death of Mr. Hicks.

c) by failing to provide supervision and/or proper training, where the necessity of same was necessary, required by law, and/or needed; and

d) by ignoring Mr. Hicks's serious medical needs.

17. Defendant Christopher Pool's actions and/or omissions were not "objectively reasonable" in light of the facts and circumstances confronting them without regard to their underlying intent or motivation. Clearly, careful attention to the facts and circumstances of this particular case demonstrates the unreasonableness of Defendant Pool's actions. Mr. Hicks never posed an immediate threat to the safety of Defendant Pool.

18. § 1983 – Excessive Force. Plaintiffs plead that Defendants used excessive force and/or unnecessary force in violation of the Fourth Amendment and its reasonableness standard. Plaintiffs therefore plead that Mr. Hicks was unlawfully and physically assaulted by Christopher Pool. Said actions resulted directly and only from the use of force that was clearly excessive to the need, and the excessiveness of which was objectively unreasonable.

19. Under § 1983, Defendant Harris County is also liable for failing to supervise and/or failing to train, and/or acquiescence in unconstitutional behavior by subordinates. First, Defendant Harris County failed to properly train and failed to properly supervise its officers. Defendant Harris County is liable under § 1983, as there is a causal connection between its actions and/or omissions and the alleged constitutional violations, as outlined throughout this entire pleading. In addition, Defendant Harris County did not discipline the individual Defendants for their conduct, thereby sanctioning their actions, amounting to a departmental policy that violated Mr. Hicks's constitutional rights. Defendant Harris County failed to supervise or train amounted to gross negligence or deliberate indifference.

20. It is also well established that counties are liable under 42 U.S.C. § 1983 for constitutional torts that are in compliance with their customs, practices, policies, or procedures. A county is liable for constitutional deprivations visited pursuant to governmental custom even though such custom has not received formal approval through the body's official decision making channels. In this case, Defendant Harris County is liable because it sanctioned the custom, practice, and/or policy or procedures of, *inter alia*, 1) using excessive, and oftentimes deadly force, 2) using deadly force when such is not necessary and/or allowable, 3) ignoring the serious need for training and supervision of their officers in regards to the use of force, 4) failing to discipline those persons whom are found to have engaged in the use of excessive force are found to have engaged in the use of excessive force upon those entrusted to their care and/or under their control, 5) failing to adequately supervise and/or observe their employees and/or officers including reservists, 6) failing to impose proper and sufficient policies

and/or procedures as to the use of force and/or the treatment of the mentally ill. Such policy and/or customs were the “moving force” behind the constitutional violation (excessive force) exacted upon Mr. Hicks and was the “cause in fact” of his injuries, and ultimately his death.

21. Plaintiffs allege, inter alia:

A continuing and pervasive pattern of civil rights abuse by Harris County officers against persons within the Harris County Jail.

The deliberate indifference of Harris County in failing to adequately train, supervise and discipline their officers.

A continuing pattern of civil rights abuses that result from Harris County’s deliberate conduct in establishing policy and custom that encourages and acquiesces in Fourth and Fourteenth Amendment rights violations.

22. Individual Defendants’ failure to stand ready to provide emergency medical care when faced with the substantial likelihood of injuries were the direct result of Harris County’s unwritten custom and/or policy of allowing their officers to abandon the written county policies at their unilateral discretion. As a result of Defendant Harris County’s unwritten policies and customs, deliberate indifference, deliberate conduct as described above, the county is the moving force behind the individual Defendant officers’ act of using excessive force which killed Mr. Hicks.

23. Policies, practices, and customs of Defendant Harris County that allowed the individual Defendants to use excessive force against citizens, and to subject persons to outrageous, unreasonable, and inhuman treatment that leads to serious injury and death.

24. Defendant Harris County failed to discipline any of the individual Defendant officers who were involved in the assault of Mr. Hicks. Defendant Harris County’s

refusal to discipline the officers effectively acted to ratify the conduct, and further evidences the existence of preexisting policy and custom of allowing officers to engage in such conduct.

25. The actions and/or inaction taken in this case was uncalled for and taken pursuant to the customary practice and/or policies or procedures that were sanctioned by all named entity Defendants. Liability for Defendant Harris County is established under 1983 because turning a blind eye to the use of excessive force is a persistent, widespread practice of county officers that, although not authorized by officially adopted policy, is so common and well settled as to constitute a custom that fairly represents official policy. Defendant Harris County had actual or constructive knowledge of each practice, custom, and/or policy or procedure and numerous prior incidents of such conduct and/or inaction as to establish accession to that custom by the policy makers. Defendant Harris County's unspoken policies above reflect a decision that shows deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision. In the alternative, Defendant Harris County is liable under 1983 for failing to adopt clear policies outlining the criteria for determining the need for, the availability of and/or the means by which to use force.

26. Moreover, Defendant Harris County is liable for the inadequate training of their officers under § 1983. Liability attaches to Defendant Harris County because its failure to train amounts to deliberate indifference to the rights of the persons with whom the officers come in contact.

SECOND CLAIM FOR RELIEF – ASSAULT

27. The allegations contained in paragraphs 9 through 26 are herein incorporated by reference, the same as if fully set forth verbatim for any and all purposes of this pleading. Furthermore, the claims brought by Plaintiffs under this section apply only to Defendant Christopher Pool. Any reference to “Defendants” in this section only applies to the aforementioned individual Defendants and does not include Defendant Harris County.

28. As a pendent state cause of action, at all times material and relevant herein, all individual Defendants, by acts and/or omissions and under color of state law did then and there by acts and/or omissions, intentionally, knowingly, and recklessly cause severe personal injury to Mr. Hicks through unconsented physical contact with him.

29. Under Texas law, the cause of action for excessive force is simply one for assault and battery. Consequently, Plaintiffs allege that Defendant Christopher Pool committed an assault upon Mr. Hicks when they intentionally, knowingly, and/or recklessly caused his death. Said assaultive conduct of Defendant was committed intentionally, knowingly, and/or recklessly and was the proximate cause of physical and emotional injuries to Mr. Hicks. Said injuries were the direct and immediate consequence of Defendant’s wrongful acts and a natural and direct result of the assault.

30. At no time was said Defendant privileged to take the action, as force was not necessary. Moreover, said Defendant’s assault and battery of Mr. Hicks was not objectively reasonable when balancing the amount of force used against the need for the force.

DAMAGES

31. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered the following injuries and general damages:

Physical pain and mental anguish in the past and future.

32. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered the following injuries and special damages:

Funeral and burial expenses

33. In addition, Plaintiffs pray for punitive damages against Defendant Christopher Pool. Punitive damages are designed to punish and deter persons such as Pool who have engaged in egregious wrongdoing. Punitive damages may be assessed under 1983 when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.

34. Pursuant to the Civil Rights Attorney's Fees Award Act, 42 U.S.C. § 1988, a prevailing party in a § 1983 case is entitled to recover its attorney's fees. Hence, Plaintiffs further pray for all costs and attorney fees associated with bringing the present case to trial.

PRAYER

35. For these reasons, Plaintiffs pray that upon trial of the merits, Plaintiffs recover compensatory damages against Defendants, jointly and severally; that Plaintiffs also recover punitive damages against Defendant Christopher Pool in an amount to punish and/or deter and to make an example of him in order to prevent similar future conduct; and that Plaintiffs recover against each Defendant all reasonable and necessary

attorney's fees, court costs and expenses in regards to the present suit in litigation. Moreover, Plaintiffs pray for all prejudgment and post-judgment interest that can be assessed against the Defendants in the event of recovery; and that Plaintiffs recover against each Defendant any and all other general or specific relief to which they prove themselves justly entitled.

Respectfully submitted,

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NOTICE OF ELECTRONIC FILING

The undersigned counsel hereby certifies that he has electronically submitted for filing a true and correct copy of the above and foregoing in accordance with the Electronic Case Files System of the Southern District of Texas on the 20th day of February, 2014.

s/ John B. Martinez

JOHN B. MARTINEZ

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing pleading was served on all counsel of record through electronic notification pursuant to the electronic filing in the United States District Court for the Southern District of Texas this 20th day of February, 2014.

s/ John B. Martinez

JOHN B. MARTINEZ